

-2:18-cr-055-APG-GWF - March 1, 2019-

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3
4 UNITED STATES OF AMERICA,) Case No. 2:18-cr-055-APG-GWF
5 Plaintiff,) Las Vegas, Nevada
6 vs.) Friday, March 1, 2019
7 CEMONE CHAMPAGNE LEWIS,) Courtroom 6C, 9:10 a.m.
8 Defendant.) SENTENCING HEARING
9) C E R T I F I E D C O P Y

11 | REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 BEFORE THE HONORABLE ANDREW P. GORDON,
UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 | For the Plaintiff:

17 UNITED STATES ATTORNEY'S OFFICE
18 BY: PHILLIP N. SMITH, JR., AUSA
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Las Vegas, NV 89101
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20 (Appearances continued on Page 2)

21 COURT REPORTER:

22 Heather K. Newman, RPR, CRR, CCR #774
United States District Court
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24 (702) 471-0002 or HN@nvd.uscourts.gov

25 Proceedings reported by machine shorthand; transcript produced by computer-aided transcription.

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1 APPEARANCES CONTINUED:

2 For the Defendant:

3 GABRIEL L. GRASSO, P.C.
4 BY: GABRIEL L. GRASSO, ESQ.
411 South Sixth Street
5 Las Vegas, NV 89101
(702) 868-8866

6 Also present:

7 Erica Strome
8 United States Probation Office

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1 LAS VEGAS, NEVADA; FRIDAY, MARCH 1, 2019; 9:10 A.M.

2 --oo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. Please be seated, everyone.

6 COURTROOM ADMINISTRATOR: United States vs.

7 Cemone Champagne Lewis, 2:18-cr-055-APG-GWF. This is the time
8 set for imposition of sentence.

9 Counsel, please make your appearances.

10 MR. SMITH: Good morning, Your Honor, Phillip Smith
11 appearing on behalf of the United States.

12 THE COURT: Good morning.

13 MR. GRASSO: Good morning, Your Honor, Gabe Grasso on
14 behalf of Mr. Lewis.

15 THE COURT: Good morning.

16 Good morning, Mr. Lewis.

17 THE DEFENDANT: Good morning, sir.

18 THE COURT: On August 8th -- oh, go ahead.

19 (Attorney-client discussion.)

20 THE COURT: Go ahead, if you -- chat some more. I
21 know we got a last minute PSR so if you need to go over it, go
22 ahead. Take your -- take your time.

23 MR. GRASSO: Can I have a minute, Your Honor?

24 THE COURT: Absolutely. Yeah. No. Absolutely.

25 (Attorney-client discussion.)

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1 MR. GRASSO: Go ahead, Your Honor. Thank you.

2 THE COURT: Have you had a chance to go over the
3 revised Pre-Sentence Report?

4 MR. GRASSO: I have, Your Honor.

5 THE COURT: Okay. Great.

6 On -- Mr. Lewis, on August 8th of this year you -- of
7 last year you pleaded guilty to the charge of Felon in
8 Possession of a Firearm and this is the time set for imposition
9 of sentence upon you.

10 Before we get to that, let me ask both counsel, there
11 is also a pending revocation of pretrial release. Is that now
12 moot since we're here for sentencing or what's the status or
13 what's the impact of that on this?

14 MR. GRASSO: Obviously, Your Honor, depending on -- I
15 mean, once -- I'm assuming once the Court sentences -- whether
16 the Court sentences him to time served or 27 months or
17 whatever, the pretrial is over with. So, I think it's moot.

18 THE COURT: Seems to me that might be the case
19 unless -- I -- Mr. Smith.

20 MR. SMITH: No, I agree with that, Judge.

21 THE COURT: All right. So I'm going to hold off on
22 addressing the revocation issue for now and we'll figure out
23 what we do after sentencing.

24 All right. So, Mr. Grasso, you've had a chance to
25 read the updated Pre-Sentence Investigation Report?

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1 MR. GRASSO: I have, Your Honor.

2 THE COURT: And have you had a chance to discuss it
3 with Mr. Lewis?

4 MR. GRASSO: I have.

5 THE COURT: Any factual errors in the report that need
6 to be corrected --

7 MR. GRASSO: No, Your Honor.

8 THE COURT: -- that you're aware of?

9 MR. GRASSO: He's -- he's -- we were going over just
10 the fact that, you know, they -- in the new report, it was
11 added, the new charge was added and whether that charge is
12 being counted for his criminal history points. Although he --
13 but he hasn't -- I've explained to him that he hasn't been
14 convicted of that charge -- or, well, he's pled guilty, he
15 hasn't been sentenced on it yet, so the 2 extra points aren't
16 in there yet.

17 THE COURT: 1 extra point is my thought.

18 MR. GRASSO: The two extra levels; right?

19 MR. SMITH: It's 1 point. He gets 1 point for
20 pleading guilty.

21 THE COURT: Pull --

22 MR. GRASSO: Yeah.

23 THE COURT: I can't hear you, Mr. Smith. Pull the
24 microphone over.

25 MR. SMITH: It's 1 point for pleading guilty,

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1 Your Honor.

2 MR. GRASSO: Yeah. There is that 1 point, but it
3 would be worse if this happened after he was sentenced on the
4 case.

5 MR. SMITH: That is correct.

6 THE COURT: Okay. And I know there -- I notice, on
7 Page 20 of the Pre-Sentence Report, there are two other
8 additional charges still pending against him for possessing a
9 gun by a prohibited person.

10 Those have not been addressed yet, apparently.

11 PROBATION OFFICER: No, Your Honor. The one in
12 Paragraph 66 appears to be related to the instant offense and I
13 do believe that there was notes in the minutes that it could be
14 a duplicative case to the federal case, so it's possible that
15 that one might be dismissed.

16 THE COURT: Okay. But then the one in 65 is still
17 pending; correct?

18 PROBATION OFFICER: Correct.

19 MR. GRASSO: Your Honor, his state charges are done --

20 THE COURT: So what about the --

21 MR. GRASSO: -- from what I understand.

22 THE COURT: So what about the case referenced in
23 Paragraph 65? There's a bench warrant because he failed to
24 appear -- two bench -- he was arrested in August for that one,
25 released on an OR and there's negotiations pending scheduled

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1 for April 22nd?

2 MR. SMITH: So, Judge, if I may, I -- the arrest in
3 Paragraph 65 is actually the same conduct as in this case, the
4 one that's before Your Honor.

5 THE COURT: Okay.

6 MR. SMITH: The arrest in 66 is a different incident
7 that, it's my understanding, is, in fact, still pending.

8 THE COURT: Okay. All right. Okay. You're right.
9 65 I see is offense conduct. So 65 would be this one.

10 MR. SMITH: Correct.

11 MR. GRASSO: Yeah. My --

12 (Attorney-client discussion.)

13 MR. GRASSO: Your Honor, my understanding is that's
14 correct, technically correct, but the Paragraph 66 charge was
15 part of the global -- the global resolution in his state case
16 and once he's sentenced on the burglary charge that he got that
17 he pled to in the state case out of all these incidents that
18 happened in November of last year, this charge is going to be
19 dismissed.

20 THE COURT: Officer Strome?

21 PROBATION OFFICER: Your Honor, I have the dockets
22 from both of them from the 26th, so that's the most recent that
23 I've ran it. It doesn't --

24 THE COURT: 26th of February?

25 PROBATION OFFICER: Yes. If you would like to see

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1 them.

2 THE COURT: And -- you have them for both of them?

3 PROBATION OFFICER: Yes.

4 THE COURT: Okay.

5 MR. GRASSO: Do you have the minutes?

6 THE COURT: Show those to Mr. Grasso if you would,
7 please.

8 PROBATION OFFICER: Okay.

9 MR. GRASSO: I'm going by what my client's telling me,
10 Judge, because I don't -- I'm not representing him in state
11 court.

12 THE COURT: Understood.

13 (Attorney-client discussion.)

14 PROBATION OFFICER: I believe both of them just say
15 "pending negotiations."

16 THE COURT: Okay.

17 MR. GRASSO: You know, being pretty familiar with
18 this, it seems, Your Honor, that he's -- he's indicating to me
19 that those charges, you know, they basically worked everything
20 out, especially since the -- he's being represented by --

21 THE DEFENDANT: Worked it out over here, not in the
22 state. This was a part of this deal. I pled guilty over here
23 to dismiss both of the charges in the state.

24 MR. GRASSO: They're both owning a gun by a prohibited
25 person, Your Honor.

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1 THE COURT: Correct.

2 MR. GRASSO: Except --

3 THE COURT: And appear to be 9 days apart, which is
4 what I found a little shocking.

5 MR. SMITH: Well, Judge, that's because that's a
6 separate event.

7 THE COURT: Right. I know, the -- Paragraph 65, on
8 February 1st, is the offense for this case.

9 MR. SMITH: Yes, sir.

10 THE COURT: And then it appears that 9 days later, on
11 February 10th of that year, he was arrested again.

12 MR. SMITH: Correct.

13 THE COURT: For again, possession, in a different
14 case?

15 MR. SMITH: Yes, sir.

16 THE COURT: So there're two gun possession charges
17 within 9 days, two separate events.

18 MR. SMITH: Yes, sir.

19 THE COURT: That's what I found a little odd, if not
20 worse than odd. Troubling I would say.

21 (Attorney-client discussion.)

22 MR. GRASSO: Yeah, it doesn't say. I -- I --

23 (Attorney-client discussion.)

24 MR. GRASSO: It appears that his state sentencing,
25 Your Honor, from what I see from the Guilty Plea Agreement,

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1 which I see these every day, doesn't say anything about any
2 other charges being dismissed. I mean, it just simply says
3 he's pleading in the case that arose out of his arrest in
4 November where the SWAT team came out and all that stuff, he's
5 pleading to one charge, which is an attempted burglary, which
6 is a C felony, and that's it.

7 THE COURT: And that's the barricade situation where
8 he barricaded himself and the SWAT came and got him out?

9 MR. GRASSO: Right. And the interesting part is,
10 the -- his pretrial -- one of his addresses for pretrial was
11 that address.

12 THE COURT: Pull the microphone up if you would.

13 MR. GRASSO: One of his addresses for pretrial here
14 was the address that he's charged with burglarizing, so, he --
15 this was an address that he's lived at, but that never stopped
16 anybody from working out a deal, you know, a favorable deal,
17 let's say, to drop other charges, but that's what's going on.

18 THE COURT: Yeah. No. Given the scenario, I was
19 intrigued to say the least to see that they -- he pled to
20 burglary, or attempted burglary, but I don't disagree with you
21 that sometimes that's how things work out. But it seems to be
22 separate and apart from the two other gun charges that
23 apparently are still pending. But I'm not sentencing him on
24 those two other gun charges. That's for the state court to
25 deal with. That's their deal, not mine, although, as Mr. Smith

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1 points out, the one in Paragraph 65 related to this one may go
2 away once I sentence in this case but the Paragraph 66 one is a
3 different issue that Mr. Lewis will have to address in state
4 court.

5 Okay. All right. So we got that cleared up.

6 Mr. Lewis, did you have a chance to read through the
7 Pre-Sentence Report?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And pull the microphone up if you would,
10 please. Just pull it closer to you.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Thank you.

13 And you discussed it with Mr. Grasso?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Was he able to answer all your questions
16 about that Pre-Sentence Report?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you aware of any factual errors in
19 that report that need to be corrected?

20 THE DEFENDANT: Yes, sir.

21 (Attorney-client discussion.)

22 THE DEFENDANT: Oh, there's no errors.

23 THE COURT: Okay. All right. So in determining the
24 appropriate sentence, there's a lot of things I have to
25 consider. First, I look at the statute that Congress has

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1 passed to determine what the maximum sentence is and to
2 determine if there's any mandatory minimum I have to enforce.

3 Here, there's no mandatory minimum, and the maximum
4 term of imprisonment is 10 years. I can impose a term of
5 supervised release of up to 3 years, a fine of up to \$250,000,
6 and I also have to impose a special assessment of \$100.

7 I then look at the sentencing guidelines adopted by
8 the United States Sentencing Commission, and those are
9 guidelines to help judges like me come up with an appropriate
10 sentence. They're also designed to help judges come up with a
11 sentence that keeps similarly situated defendants across the
12 country getting somewhat similar sentences. The guidelines
13 recommend a sentence based on a lot of factors, but primarily
14 it's the nature of the offense you've committed and your
15 personal criminal history. Based on those two broad
16 categories, the guidelines then recommend a range I have to
17 consider. I'm not required to follow that, but I have to at
18 least consider it.

19 Here, the guidelines -- Probation calculated the
20 guideline Offense Level to be 14. . .

21 Hang on a second.

22 (Brief pause in proceedings.)

23 THE COURT: With no reduction for acceptance of
24 responsibility, which puts you at a Base Level of 14, and that
25 is consistent with the parties' Plea Agreement because the

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1 Plea Agreement didn't have any calculations, my recollection.

2 MR. SMITH: Correct, Judge.

3 THE COURT: All right. Probation calculated you as
4 having 7 criminal history points, which puts you in Category
5 III.

6 So with a Total Offense Level of 14 and a History --
7 I'm sorry, Category IV. With a Total Offense Level of 14 and a
8 History Category of IV, the guidelines recommend a sentence in
9 prison of 27 to 33 months, plus 1 to 3 years of supervised
10 release, and a fine in the range of 7,500 to \$75,000.

11 There's another set of factors I have to consider
12 after the guidelines. I'll get to those in a minute, but first
13 let me check. I haven't seen any objections to the report.
14 Are there any objections today from either side?

15 MR. GRASSO: No, Your Honor.

16 THE COURT: Mr. Smith, any objections to the
17 Pre-Sentence Report?

18 MR. SMITH: No, sir.

19 THE COURT: All right. I have read the Pre-Sentence
20 Report, and the Indictment, and the Plea Agreement, and the
21 papers related to the request for revocation of pretrial
22 release. If there are any additional comments, I'll entertain
23 those now.

24 Mr. Smith.

25 MR. SMITH: Your Honor, for the record, because of the

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1 defendant's commission and subsequent plea to a new felony
2 offense, the government is not bound by the terms of the
3 Plea Agreement that required it to recommend a sentence for
4 time served. So to that end, I am going to agree with
5 Probation's recommendation in toto and, so, I'm going to ask
6 that you do impose a 27-month sentence and as also recommended
7 by the PSR, to order that sentence to run consecutive to his
8 state court case.

9 So let me briefly touch upon, Your Honor, the reasons
10 why I think you should impose a guideline sentence. And I
11 would note for the record that despite the fact that I could
12 probably stand here with a straight face and make an argument
13 as to why the defendant should receive a sentence that is
14 higher than the low end of the guideline range, I'm still going
15 to nevertheless concur with Probation's recommendation that you
16 sentence him to the low end but I am going to entreat upon the
17 Court that you do impose a guideline range sentence.

18 Your Honor, when we look at the defendant's criminal
19 history, it is rather extensive. I won't go into excruciating
20 detail, but suffice it to say that it looks like his first
21 serious foray into the criminal justice system, at least in
22 that it resulted in some type of adjudication, was back at age
23 19 when he was busted for essentially dealing crack cocaine.
24 Ultimately, he received probation in that case. That probation
25 was terminated unsatisfactory and, of course, that would be the

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1 first instance of multiple, repeated grants of leniency from
2 various judges in various states where the defendant did not
3 rise to the occasion and, instead, continued to either commit
4 new crimes or just simply not take the criminal justice system
5 seriously.

6 After this conviction for Possession of a Controlled
7 Substance in 2009, the next thing we see is a -- appears to be
8 a felony conviction for Possessing a Fraudulent ID Card. In
9 that case, he was granted probation. In that case, he violated
10 probation and that probation was ultimately terminated
11 unsatisfactory.

12 Then after that, we have this aggravated unlawful use
13 of a weapon, which arguably could be considered a crime of
14 violence but the government opted not to pursue that in terms
15 of trying to reach a negotiation, but nevertheless, it does
16 involve some serious conduct where, among other things, it
17 appears the defendant pointed a loaded firearm at a police
18 officer. That resulted in him being actually sent to
19 36 months -- or sentenced to 36 months in prison where then
20 ultimately he was paroled, but then, once again, we see that he
21 could not abide by conditions because it appears he was
22 returned to prison on some kind of parole violation and then
23 ultimately discharged a couple of months later.

24 I'd also note that in that particular conviction the
25 PSR writer notes that during his brief incarceration, he

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1 sustained nine minor and four major disciplinary infractions.
2 So, again, this just shows a pattern of a person who simply
3 just, unfortunately, does not get it.

4 Then, of course, we come to what perhaps is the most
5 aggravating factor in this case, Your Honor, and that is the
6 fact that after -- pursuant to the parties' negotiation, you
7 released the defendant after he pled guilty and if I recall, I
8 think you kind of warned the defendant that he needed to stay
9 out of trouble, I think we all did, but lo and behold, he
10 commits a new offense. And now there can't be any argument
11 from the defendant that he didn't do it or, you know, I'm not
12 convicted of it, this is still an arrest, he pled guilty to
13 committing an attempt burglary. And while I know us lawyers in
14 here may disagree with whether or not it truly constituted a
15 burglary, it cannot be denied that according to the information
16 provided to Probation that there was some kind of domestic
17 dispute that ultimately resulted in Mr. Lewis' romantic
18 partner, or ex-child's [sic] mother, or ex-girlfriend, or
19 however you want to characterize her as having physical
20 injuries consistent with her account and digital photos being
21 taken of the red marks and scratches around her neck. So
22 obviously while no one in this room other than Mr. Lewis was
23 present, there is some objective evidence that indicates that
24 something happened, coupled with the fact that the defendant
25 ultimately pled guilty to a new felony offense, which, as I

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1 stated earlier, is an aggravating factor here in this case.

2 Then if you look at his other criminal conduct for
3 which, candidly, or -- excuse me -- concededly, he wasn't
4 convicted of, I do believe nevertheless that pursuant to
5 statute you can consider this and it -- you know, if I just run
6 down some of the most important further context that the
7 defendant had with the criminal justice system dating back to a
8 10-year-old arrest for -- strike that -- an arrest for robbery
9 when he was 10 years old. Another arrest for robbery when he
10 was 15, in 2006. Then an arrest for criminal sexual abuse at
11 age 19. Then an arrest for battery at age 20; an arrest for
12 manufacturing or delivering cocaine in a public high school at
13 age 23; an arrest for domestic battery bodily harm at age 26;
14 an arrest for Felon in Possession of a Firearm -- not talking
15 about this case -- at age 26; another arrest for aggravated
16 battery and discharging a firearm at age 26 and then, of
17 course, there's the arrest for possessing a firearm again
18 9 days after he committed this offense.

19 And then the details in that case include a statement
20 including by the -- included by the PSR writer that indicates,
21 "Further investigation revealed" -- and for the record, I'm
22 referencing Paragraph 66 of the PSR -- "Further investigation
23 revealed that the defendant had several videos and photos on
24 his social media Instagram page under the name of kingyella74
25 in which he possessed firearms, specifically while shooting rap

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1 videos."

2 So, Judge, I mean, this is a guy who knows that he
3 can't possess a firearm yet continually does so. And this is a
4 guy who shows absolutely no respect for the law despite being
5 given multiple grants of leniency by various courts, including
6 your own because you didn't have to go along with the releasing
7 him from custody. You did it in order to presumably give
8 Mr. Lewis some kind of incentive to conform his conduct with
9 what you would expect for a person who has pled guilty to a
10 crime in federal court and is awaiting sentencing, but he
11 didn't do that. So all of the evidence in front of you,
12 objectively, suggests to you that you need to impose a sentence
13 that is going to hopefully instill or encourage respect for the
14 law and then provide just punishment for the offense. So
15 that's why I think, humbly, Your Honor, that a guideline
16 sentence is warranted here.

17 I am respectfully requesting you impose a low end
18 sentence, that you order it consecutive to the pending state
19 court case, which -- because that case is not being used as
20 relevant conduct for this case. It is a completely separate
21 offense and, in fact, I believe the guidelines instruct that
22 you should run that -- this sentence consecutive to whatever
23 he's going to get in state court and, of course, statutes of
24 the United States allows to you do that despite the fact that
25 it is a yet-to-be-imposed sentence and it is anticipated, but

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1 for all those reasons, Your Honor, I respectfully request you
2 follow the recommendation from Probation and sentence the
3 defendant accordingly, along with 3 years of supervised
4 release.

5 To the extent that you are inclined to give the
6 defendant some leniency, then I would ask you to consider
7 imposing a -- somewhat of a different punitive sanction, which
8 is to consider imposing a fine upon the defendant. The reason
9 why I'm suggesting that is because by his own statements he
10 claims to be a successful rap artist. Well, if that's the
11 case, then the defendant is in a position, unlike most
12 defendants who are charged with this case who come before you,
13 in that he has a punitive stream of income in the future. So
14 I'd ask you to consider that when also crafting the appropriate
15 sanction in this case.

16 THE COURT: Let me -- let me ask you or confirm, my
17 ability to run this consecutive, if that's where I go, to the
18 state court. I know I -- I can't run it to a yet-to-be-imposed
19 federal sentence.

20 MR. SMITH: Correct.

21 THE COURT: But my recollection is the case law says I
22 can run it consecutive to a yet-to-be-imposed state court
23 sentence.

24 MR. SMITH: You can, Judge.

25 THE COURT: That's what I was -- my recollection as

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1 well. Okay.

2 Thank you. I cut you off. Anything further,
3 Mr. Smith?

4 MR. SMITH: No, sir, thank you.

5 THE COURT: Thank you.

6 Mr. Grasso.

7 MR. GRASSO: Yes, sir, Your Honor.

8 I guess this case goes down in my book as beware when
9 you get a call from CJA that says, hey, it's just for
10 sentencing. So, I didn't represent Mr. Lewis in his case, but
11 I -- I would just want to point out and I -- and I -- you know,
12 this is one of those cases where I -- I've been doing this long
13 enough to know that this is one of those cases where I'm not
14 the guy with the leg up. I have an uphill battle here to make
15 an argument to the Court about the sentence to be imposed, but
16 I will point out a couple of things, that the government has
17 done a pretty detailed job in going through today with the
18 Court as to Mr. Lewis' sort of lengthy criminal background,
19 whether they were convictions or arrests. And I leave it up to
20 the Court on both -- I'm well aware of how this Court has been
21 doing its job and I know that the Court's not going to take
22 arrest without conviction that -- as seriously as a conviction,
23 and I understand that and I'm not going to sit here and argue
24 those points, but clearly Mr. Lewis has had contact with the
25 criminal justice system and my only point is if that's the

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1 case, then what was it about this case -- and I wasn't part of
2 the negotiations -- what was it about this case that allowed
3 the government to move forward and to have approval for a
4 time-served recommendation. So there had to have been
5 something to do with the facts of the case not being like --
6 you know, I was in front of -- early on in my career when I
7 started off as a public defender back in '89, I had a -- I was
8 in front of a judge named John Miller who ended up becoming the
9 Godfather of one of my kids, and although he hardly ever let me
10 win, a Bench Trial, in Juvenile Court, and he would always say,
11 well, there's half a loaf here, the state has half a loaf,
12 that's what he'd say when he was thinking about possibly ruling
13 for the defendant. And that's what I think may have been
14 happening here, that the factual basis of this -- this case, so
15 I'd like the Court to take that into account, that I --
16 understood that he has an extensive background, but there's
17 something about this case that allowed the government to say,
18 okay, we're going to give this guy time served as opposed to
19 taking it to the wall and saying, this guy's got such a bad
20 background that we're going to try to go all out on him. So
21 there's something there.

22 As for the -- I see the most -- the most. . . . serious
23 part of everything that's happened here is, in my opinion and
24 with my experience is, that this Court allowed Mr. Lewis to be
25 at liberty after his plea, which is a sort of solemn thing that

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1 a defendant has to follow, and Mr. Lewis let this Court down.
2 That's -- that, to me, is the most -- if I were a judge, I
3 would be looking at the most seriously, that that should not
4 have happened. So -- so -- and that's something that I have
5 to -- you know, that I really can't get around in this case. I
6 can't say, Your Honor, you should just give him leniency even
7 though he did that. But I think if the Court takes everything
8 into consideration and how this case was originally worked out,
9 understood that there's a -- a state case that he's going to be
10 sentenced to, understanding that we have a situation where the
11 government's asking for the Court to -- you know, he's --
12 because of the state case, he's lost his acceptance, he's lost
13 his -- the advantage of that on the guidelines, so that's
14 affecting him and I'd ask the Court to take that into
15 consideration when considering whether to -- because I don't
16 think the Court has to say anything regarding concurrent or
17 consecutive; the Court can just sentence him and if the Court
18 doesn't say I'm going to make sure it's consecutive to his --
19 under the case law, consecutive to his upcoming state court
20 sentence, if the Court just remains silent on that, then it can
21 be up to the state court judge to say I'm going to run this
22 consecutive or concurrent to his federal sentence, and that's a
23 separate argument that has to be made by his public defender.

24 So, I think considering the fact that the whole reason
25 this case is sort of, for lack of a better term, blown up in

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1 Mr. Lewis' face, you know, that being his doing, but blown up
2 in his face, is the fact that the case that the state -- the
3 government's now asking you to run consecutive to is a case
4 that's causing all this to happen and why he's not getting his
5 deal. So I'd ask him -- ask the Court to take that into
6 consideration when deciding whether to say anything about it
7 being consecutive to his state court case.

8 I would -- I think the only reasonable thing I can ask
9 for, Judge, and I'm not going to sit here and ask the Court,
10 with everything that's gone by, for the original I believe it
11 was time-served or 15-month sentence, I don't know if it was
12 15 -- or if it was just timed served.

13 THE COURT: It was time served in the original
14 Plea Agreement.

15 MR. GRASSO: Right, and I -- I know that before he
16 sort of, on the guidelines, was somewhere around 15 months
17 instead of 27 months. I know he's done -- and considering the
18 time served here, Judge, meaning, I've worked it out and I
19 don't -- and I -- and that's when the Court walked into the
20 courtroom I was with Probation trying to work out the time
21 served numbers. Here's another issue, and that is, since
22 March 28th of 2018 -- I mean, March -- March 5th of 2018, when
23 he got arrested in this case, he was in custody for 165 days,
24 and that includes the 7 days since the 22nd of February when he
25 was brought back from CCDC to federal custody. So it's been --

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1 it was last Friday, so that's 7 days. So, that's 165 days.

2 That's. . .

3 PROBATION OFFICER: 156. 156 days.

4 MR. GRASSO: 156?

5 PROBATION OFFICER: From March 5th, 2018, to

6 August 8th, 2018.

7 MR. GRASSO: So August 8th. Right, but then he's got
8 7 more days.

9 PROBATION OFFICER: So 156 plus the 7 days from
10 February 22nd to today.

11 MR. GRASSO: Okay. So that's 163?

12 MR. SMITH: Correct.

13 MR. GRASSO: Okay. Instead of 165. Okay. I missed
14 by a couple days. So it's 163.

15 There's another issue, Judge, which is, this is
16 obviously -- it's completely to the discretion of the Court, he
17 spent from November 13th until the 22nd of February in state
18 custody. That was 101 days that he spent. And just so the
19 Court is aware, he's -- he was -- he and I had a conversation
20 about that time, and unlike Pahrump, which is actually one of
21 the more pleasant, if you're going to call it that way, places
22 to actually spend time compared to CCDC and other places in the
23 county, he spent his time -- those 101 days what they call 23
24 and 1, which is 23 hours locked down in confinement and 1 hour
25 out. And he says it's the first time in his life that he had

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1 to start taking psychiatric medication. So he did do some
2 pretty hard time in that -- in CCDC.

3 So, based on that, Judge, my argument to the Court is
4 to consider a sentence somewhere between the 15 months or so
5 that he originally scored, regardless of the time served, and
6 the 27 months that the -- that the government and Probation are
7 asking for, and with that, I would sit down and submit it to
8 the Court.

9 Thank you, Your Honor.

10 THE COURT: Mr. Lewis, you're entitled to speak here
11 in court if you'd like. You're not required to, but if there's
12 anything you'd like to say, I'll listen to you at this time.

13 THE DEFENDANT: First of all, I would like to say I'm
14 sorry. I went home and I was trying my best to do the right
15 thing, take care of my kids, do my music. I was on house
16 arrest for 70 days and as soon as I got off house arrest, the
17 mother of my child, she just spiraled out. So we wasn't seeing
18 eye to eye and then she was trying to -- she put -- trying to
19 put me out and then all this stuff had happened, but I would
20 like to say that I've been through a lot in my life. I come
21 from Chicago where all I seen is killing and people trying to
22 kill me every day. You know what I'm saying? I got four kids
23 out there. I moved to Vegas to change my life, but somehow I
24 still -- yes, I did get -- get a gun because people be after
25 me, you know what I'm saying? But the way they got the gun was

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1 illegally and I had license and registration and they --
2 they -- they did police misconduct, cussed me out, called me
3 all type of names and all type of stuff and stuck they hands
4 inside my drawers on camera when this case originally happened,
5 so, that's --

6 THE COURT: Is that -- is that the first part of the
7 music video you made when they're busting you on the head of
8 the car?

9 THE DEFENDANT: Yeah.

10 THE COURT: I saw it.

11 THE DEFENDANT: And the words that they told me and
12 stuck his hands in my drawers, yeah, I had it, but what they
13 did, um, they never Miranderized [sic] me. They sat there.
14 They pulled me over and said the reason they stopped me was
15 for -- because I was parked in a handicapped spot so they
16 prolonged the stop and the same detective on both of my cases,
17 he's on this new case, too, so that's the reason I didn't open
18 my door when they came to the house, so, I felt like I was
19 being set up. So, I told them to get a search warrant. It
20 wasn't that I was barricading myself in the house; I'm in the
21 house with my daughter, you know, and I told them my daughter
22 was in there and they still -- they still blew the door off the
23 hinges and they never -- they never presented a search warrant.
24 But I would like to say that --

25 THE COURT: But you're posting on YouTube.

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1 THE DEFENDANT: Hum?

2 THE COURT: But you were posting on YouTube the whole
3 time. You were sending text messages to your girlfriend that
4 you were going to do suicide by cop.

5 THE DEFENDANT: Well, I was on -- I was on Instagram
6 when they came to the door and I said I didn't have to open my
7 door because they didn't have no search warrant.

8 THE COURT: Um-hmm.

9 THE DEFENDANT: So, that's what was going on.

10 (Attorney-client discussion.)

11 THE COURT: All right.

12 THE DEFENDANT: Okay. Well, I just want to say I'm
13 trying to change my life. I would like to do better or get
14 help. I don't feel doing time in prison. . . . That's all I got
15 to say.

16 Thank you, sir.

17 THE COURT: Officer Strome, does Probation have
18 anything to add?

19 PROBATION OFFICER: No, Your Honor.

20 THE COURT: Thank you.

21 I don't see anyone in the audience wishing to speak.

22 (Brief pause in proceedings.)

23 THE COURT: Okay. As I mentioned, after considering
24 the sentencing guidelines and the statute, I also look at the
25 factors set forth in a statute known as 18 U.S.C. § 3553(a),

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1 and those require me to take into account the seriousness of
2 the crime you've committed, your personal history and
3 characteristics, and the need for my sentence to do several
4 things:

5 That sentence has to reflect the seriousness of the
6 crime; it's got to protect the public; the -- it has to provide
7 appropriate punishment and to try to deter you and others from
8 committing these kind of crimes, amongst other things.

9 With regard to the crime here, it is a very serious
10 offense. Congress has put significant penalties on felons who
11 possess guns because it's a serious crime. And it's even more
12 serious because it's not the first time you've been arrested
13 and convicted of possession of weapons, so you know you're not
14 supposed to do it and you get busted in this case and 9 days
15 later you get nailed again with a gun. You just aren't
16 learning that you're not allowed to have them. Protection or
17 not, you can't have them.

18 I agree with Mr. Smith, you have a lengthy criminal
19 history going back to the age of 10. I went back and looked
20 and since the age of 19, you have been arrested or convicted
21 every year that you weren't in prison, and often multiple times
22 in any one year. And that's just a string that's got to stop.
23 You're just getting too old for this nonsense.

24 I understand you grew up in a bad neighborhood.
25 Chicago's a tough town and they've got real bad neighborhoods

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1 and I understand you grew up around that and you saw a lot of
2 it and you were involved in a lot of it, but you left that and
3 you moved to Vegas and you had a chance to start over and you
4 jumped right back into that lifestyle. You continued on with
5 the gang. You continued on with getting weapons and hanging
6 out with the wrong crowd and I don't know why, but you had a
7 chance for a do-over and you didn't take it. You just
8 continued what you were doing. If you really wanted to get out
9 of that, stop going to prison, that was your chance.

10 You got another chance again now. Every day's a new
11 opportunity to say I'm done with that stuff, but you got to
12 take that. Up till now you haven't, and that's very, very
13 troubling.

14 You have had warrants issued several times because you
15 didn't appear in court. You violated probation several times.
16 You got in trouble while you were in prison several times, and
17 then I let you out on pretrial release and you beat up your
18 girlfriend, you put your newborn child in danger, you barricade
19 yourself in, SWAT's got to come to get you out. We're lucky
20 nobody got hurt. You could have been killed. Your daughter
21 could have been killed. Some police officers could have been
22 hurt or killed in the exchange of gunfire, whatever else
23 went -- was going to go down. You created that situation.
24 Neighbors could have gotten hit with stray bullets. You
25 created a real bad situation. That's not the behavior and the

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1 payback I was hoping when I let you out on pretrial release.

2 But I have to be cautious here because I'm not
3 sentencing you for the crime you committed and pled guilty to
4 in state court. They pled it down to attempted burglary. For
5 whatever reasons they had, that's the way it is and they're
6 going to deal with that. I can't sentence you for that and I'm
7 not going to. But I do have to take into account how you
8 behaved on pretrial release because it's indicative of the
9 way -- it's just further example of what you've been doing.
10 People give you chances, the judges give you chances and you
11 just thumb your nose at it and go right back to the crime.

12 I came into this situation leery when I read the
13 original Plea Agreement about time served and I read it and I'm
14 thinking, how the heck does this guy get time served. I
15 understand from the government that you agreed to withdraw
16 the -- the suppression motion and that the government took that
17 into account, and I do too. There were reasons why the
18 government was willing to plead it down to time served. But
19 I'm -- was troubled by it. I'm not bound by that time served,
20 and certainly the government isn't either now based upon your
21 behavior on pretrial release. I am just troubled because you
22 can't seem to comply with the law.

23 I clearly need to protect the public from you. I've
24 got to do something to try to deter you from committing these
25 crimes going forward.

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9 I'm going to sentence you to 21 months in custody. I
10 think that's the appropriate amount. I'm going to run it
11 consecutive to the state court because that is a completely
12 different case, it's a completely different situation and I
13 don't know what they're going to do over in state court, but
14 that's their decision to make but I'm going to sentence you to
15 21 months consecutive to the state court case that we'll insert
16 into the Judgment.

17 I will not impose a fine.

18 I'm going to impose 3 years of supervised release.
19 While you're on supervised release, you'll comply with the
20 standard conditions recommended by the sentencing commission,
21 plus the following additional recommendations -- or sentencing
22 conditions -- supervised release conditions, I'm sorry.

23 You must not commit another federal, state, or local
24 crime.

25 You must not unlawfully possess a controlled

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1 substance.

2 You must refrain from the unlawful use of a controlled
3 substance.

4 You'll submit to one drug test within 15 days of
5 release from custody and at least two periodic drug tests
6 thereafter, not to exceed 104 tests per year.

7 You must cooperate in the collection of DNA as
8 directed by the Probation Office.

9 You must not communicate or otherwise interact with
10 any known member of the Gangster Disciples gang without first
11 obtaining the permission of the probation officer. Nothing
12 good can happen from that. You got to get yourself out of that
13 situation so you can stay out of prison. It's time to start
14 over. Take this opportunity and don't come back.

15 You'll participate in an educational services program
16 and comply with all the rules and regulations of that program.

17 You'll be subject to a warrantless search and seizure
18 requirement of your person, property, house, residence,
19 vehicle, papers, computers, and other electronic communications
20 and data storage devices. The search can be conducted by a
21 probation officer based upon a reasonable suspicion that you
22 have violated a condition of supervision and the area to be
23 searched contains evidence of a violation. Any search must be
24 conducted in a reasonable time and in a reasonable manner.

25 I'll ask Officer Strome to give you a copy of those

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1 terms and conditions.

2 Let me pause here and tell you, you've got warrantless
3 search and seizure requirement, no drugs, no weapons. If
4 somebody gets into your car and they've got drugs or weapons,
5 make them get out. If you go to somebody's house or get in
6 their car and there's drugs or weapons, get yourself out
7 because with a warrantless search, if you're in the vicinity
8 and they search and they find drugs or weapons and you're
9 trying to explain it's not mine, you're in a tough spot. I
10 don't want to see you get nailed for somebody else's junk, so
11 just police your own environment so you're not getting stuck.

12 All right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I don't want to see you coming back on
15 another release violation. And I'll remind you because if you
16 do violate, you could be sent back to prison, potentially for
17 up to the full amount of time of the supervised release and
18 potentially without any credit for time served while on
19 supervised release. So please don't get yourself in that
20 situation.

21 In your Plea Agreement, you waived most of your rights
22 of appeal. You do have some very narrow, limited rights.
23 Speak to Mr. Grasso right away so you understand your appellate
24 rights.

25 You have 14 days from the entry of Judgment in which

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1 to file a Notice of Appeal.

2 If you can't afford an attorney for the appeal, one
3 will be paid for at the government's expense.

4 If you can't afford a copy of the transcript of these
5 proceedings, again, that will be prepared at the government's
6 expense.

7 With regard to the revocation issue, I presume it's
8 moot so I'll dismiss that.

9 Any disagreement?

10 MR. SMITH: No, sir.

11 MR. GRASSO: No, Your Honor.

12 THE COURT: All right. So I'll dismiss the revocation
13 petition as moot.

14 Mr. Grasso, does your client request a particular
15 facility to do his time?

16 (Attorney-client discussion.)

17 MR. GRASSO: A facility in Arizona, Your Honor. I
18 would ask to Tucson most likely.

19 THE COURT: Okay. I'll put due to proximity of
20 family, we'll designate Arizona, Tucson preferably.

21 MR. GRASSO: Yes.

22 THE COURT: Okay. Anything else I can address for the
23 parties today?

24 MR. SMITH: No, sir. I think that's it, Judge.
25 Thank you.

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1 MR. GRASSO: No, Your Honor. Thank you very much.

2 THE COURT: All right. We're -- defendant's remanded
3 to the custody of the Marshal's Office.

4 THE DEFENDANT: Thank you, Your Honor.

5 (Proceedings adjourned at 9:54 a.m.)

6

7 ---oo---

8 COURT REPORTER'S CERTIFICATE

9

10 I, Heather K. Newman, Official Court Reporter, United
11 States District Court, District of Nevada, Las Vegas, Nevada,
12 do hereby certify that pursuant to Section 753, Title 28,
13 United States Code, the foregoing is a true, complete, and
14 correct transcript of the proceedings had in connection with
15 the above-entitled matter.

16

17 DATED: 5-12-2020

/s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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19 new case new case

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